

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

**IN RE: VALSARTAN, LOSARTAN,
AND IRBESARTAN PRODUCTS
LIABILITY LITIGATION**

This Document Relates to All Actions

MDL No. 2875

Honorable Robert B. Kugler,
District Court Judge

**DEFENDANTS' RESPONSE TO PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY [ECF NO. 2173]**

On October 13, 2022, Plaintiffs submitted a jury verdict form from a class action trial as supposed supplemental authority in support of their pending motion for class certification. See [ECF. No. 2173-1](#). As set forth below, the jury verdict form in *Siqueiros v. General Motors LLC*, No. 3:16-cv-07244 (N.D. Cal.) only serves to highlight why class certification is inappropriate in this litigation.

Notably, the *Siqueiros* court *denied* certification of the vast majority of the plaintiffs' claims in that case.¹ The court substantially narrowed the remaining

¹ Moreover, for many claims, including all claims for unjust enrichment, the *Siqueiros* Court never reached the issue of class certification because these claims were dismissed at the summary judgment stage. See *Sloan v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2020 WL 1955643, at *27 (N.D. Cal. Apr. 23, 2020); *Siqueiros v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2021 WL 2115400, at *20 (N.D. Cal. May 25, 2021), *on reconsideration in part*, No. 16-CV-07244-EMC, 2021 WL 3291837 (N.D. Cal. Aug. 2, 2021).

proposed classes and certified only three claims under three states' laws, all arising out of the same alleged engine defect in the at-issue vehicles: two for breach of implied warranty under the laws of California and North Carolina, and one for violation of the Idaho Consumer Protection Act. Plaintiffs assert that this four-page verdict form "is but the latest example of the manageability of a multi-state class trial." See [ECF No. 2173 \(the "Notice"\)](#). But to the extent *Siqueiros* has any relevance to this matter, it only serves to highlight why Plaintiffs' claims here are not manageable.

First, although *Siqueiros* was described as a "multi-state class trial," it involved only one claim from each of just three states. That stands in stark contrast to Plaintiffs' request in this case to certify **93 overlapping subclasses** of economic loss consumers advancing **five different claims per state** under the laws of **52 jurisdictions** against **30 defendants**, with individual subclasses encompassing claims from at least **three dozen states**. Plaintiffs gloss over the stark differences in scope and complexity between that case and this litigation.

Second, the jury instructions used in *Siqueiros* (attached hereto as **Exhibit A**) underscore the manageability problems that plague Plaintiffs' class proposal here, which is presumably why Plaintiffs neglected to attach them to Plaintiffs' Notice. After all, the jury instructions for just three claims from three states spanned 34 pages, with nine discrete jury instructions directed to the three-state-specific claims,

including state-specific jury instructions on the substantive elements of each claim, affirmative defenses like statute of limitations, and tolling instructions for fraudulent concealment and the discovery rule. The jury instructions here would be exponentially more complex and unmanageable, with a jury having to resolve 5 claims per state, across 52 separate jurisdictions, incorporating 30 defendants' defenses. No jury, no matter how diligent, could keep track of and faithfully apply such long and disparate instructions.

Third, the *Siqueiros* court has not entered judgment on the jury's verdict, which is subject to post-trial motions practice and appeal. *See Siqueiros v. General Motors LLC*, No. 3:16-cv-07244 (N.D. Cal.), [Docket Report](#).

For these reasons, the *Siqueiros* verdict form only demonstrates the unmanageability of Plaintiffs' trial proposal, further undermining their motion for class certification.

Dated: October 20, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 20, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants in this matter.

/s/ Gregory E. Ostfeld
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